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Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: Deployment of Wireline Services Offering Advanced
Telecommunications Capability, CC Docket No. 98-147

Written Ex Parte Presentation of Intermedia Communications Inc.

Dear Secretary Salas:

Intermedia Communications Inc. ("Intermedia") respectfully submits this written *ex parte* to request the Commission to clarify, in its future orders in the above-captioned proceeding, that the incumbent local exchange carriers ("ILECs") should provide collocation intervals in "calendar" as opposed to "business" days. As more fully explained below, at least one ILEC has seized upon the "ambiguity" in the Commission's *First Report and Order* in CC Docket No. 98-147,¹ and has been intransigently insisting that competitive local exchange carriers ("CLECs") adopt its misinterpretation of the Commission's decision.

In the *First Report and Order*, the Commission explicitly acknowledged that timely provisioning of collocation space is critical to CLECs, and recognized the competitive harm that new entrants suffer when collocation arrangements are unnecessarily delayed. Although the Commission did not adopt specific collocation provisioning intervals, the Commission did unambiguously state that "ten days [is] a reasonable time period within which to

¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket NO. 98-147, FCC 99-48, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, 15 CR 553 (1999) (*First Report and Order*).

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inform a new entrant whether its collocation application is accepted or denied.”² At least one ILEC, in particular BellSouth Telecommunications, Inc. (“BellSouth”), has taken the position that “days” means “business”—not “calendar”—days. An exchange between Vice Chairman David Burgess of the Georgia Public Service Commission and BellSouth’s witness W. Keith Milner during an arbitration hearing is illustrative:

Q: Let me ask you, Mr. Milner, when did BellSouth begin to distinguish between business days and calendar days in their basic or standard interconnection agreement?

A: I -- Umm.

Q: I recall when they were first filed here, it didn’t distinguish. The intervals were 90 days and 130 days. That’s a finite agreement, but I guess my question is from a practical standpoint, has BellSouth been utilizing 90 business days or 90 calendar days or in the actual—or as natural time interval for doing the current physical collocation arrangements that have been in place today?

A: OK. The answer is that, yes, you are correct. There were some that we quoted the interval in terms of calendar days and as we gained more experience, especially in some places where building code times were significant, we found that expressing the intervals in business days was more appropriate way to depict the amount of work and the timing of that work rather than just relying simply on calendar days. But at present we are counting days in terms of business days.

Q: I think in your testimony you quoted out of the FCC’s collocation order where they had a [sic] interval 10 days for responding to requests.

A: Yes, sir.

Q: And in that FCC order, did they specify whether or not those 10 days were calendar days or business days?

A: No, sir, they did not.

² *First Report and Order*, 14 FCC Rcd at 4791.

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Q: And how have you been interpreting that FCC order practically?

A: We've interpreted that as 10 business days. I hope we've been pretty clear to all parties that's what we are doing, but But, you know, we've interpreted the requirement that the FCC imposed that we notify collocators of the availability of space within 10 days as being 10 business days.³

BellSouth's position as illustrated above is problematic for several reasons. First, contrary to BellSouth's claims, the Commission's reference to "days" is not susceptible of several interpretations. The Commission clearly meant "calendar" days. The Commission is a sophisticated governmental agency, and it knows how to say "business" days when the circumstances dictate.⁴

Second, the use of "business" days as opposed to "calendar" days is deceptive and permits the ILECs to unnecessarily delay collocation provisioning. For example, ten business days is, in actuality, fourteen days (and potentially more, depending on whether there are intervening holidays).

Finally, the use of "business" days versus "calendar" days injects an intolerable amount of uncertainty into the collocation provisioning process. For sure, the holidays that states recognize are not necessarily uniform. For example, while Massachusetts may well recognize Columbus Day, other states may very well not. Using "business" as opposed to "calendar" days thus forces CLECs that have operations in multiple states to keep track of variations in collocation intervals, when they could be focusing on serving their customers and building their business.

In view of the unreasonable position that some ILECs, including BellSouth, have taken, Intermedia requests that the Commission clearly state in future collocation decisions that

³ Hearing Transcript, at 308-310, in *In the Matter of Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications Inc. Pursuant to the Telecommunications Act of 1996*, Docket No. 11644-U (Georgia Public Service Commission).

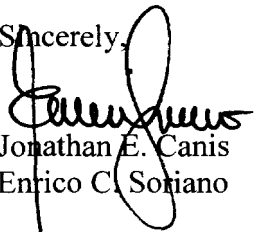
⁴ See, e.g., *Virtual Collocation and Expanded Interconnection Offerings*, CC Docket No. 94-97, Order, 2000 FCC LEXIS 1267 (Mar. 13, 2000) (requiring Bell Atlantic to file tariff revisions in five "business" days); 47 C.F.R. Sec. 1.2109(b) ("If a winning bidder. . . fails to remit the required down payment within ten (10) *business* days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in Section 1.2104(g)(2).").

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“days” means “calendar days.” In particular, the Commission should clarify that the ILECs must inform CLECs within ten “calendar” days whether their collocation applications are accepted or denied. Finally, the Commission should insist that all of the ILECs’ provisioning intervals must be stated in “calendar” days. These actions will “ensure that collocation space is available in a timely and pro-competitive manner that gives new entrants a full and fair opportunity to compete.”⁵

Sincerely,



Jonathan E. Canis
Enrico C. Soriano

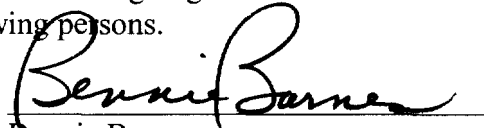
**ON BEHALF OF INTERMEDIA
COMMUNICATIONS INC.**

cc: The Hon. William E. Kennard
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The Hon. Harold Furchtgott-Roth
The Hon. Michael K. Powell
The Hon. Gloria Tristani
Mr. Lawrence Strickling
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⁵ *First Report and Order*, 14 FCC Rcd at 4791.

CERTIFICATE OF SERVICE

I, Bennie Barnes, hereby certify that copies of the foregoing written Ex Parte were served on May 31, 2000 by messenger on the following persons.


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